

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DANNY E. MARTINEZ, §
§
Plaintiff, §
VS. § CIVIL ACTION NO. C-10-104
§
MICHAEL J. ASTRUE, §
§
Defendant. §

**ORDER GRANTING UNOPPOSED MOTION
FOR ATTORNEYS FEES AND EXPENSES**

On November 29, 2010, final judgment was entered remanding this case to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) so that a proper assessment could be made of the treating physician's opinion and for plaintiff to undergo additional diagnostic testing if warranted (D.E. 20). The Commissioner did not appeal the decision.

On February 23, 2011, plaintiff filed his unopposed motion for attorneys fees and costs pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412 (D.E. 23). The Commissioner filed a response agreeing that plaintiff was entitled to EAJA fees and that the amount requested by plaintiff was reasonable, but correctly pointing out that EAJA fees are payable to the plaintiff, not to plaintiff's counsel (D.E. 24). *Astrue v. Ratliff*, ____ U.S. ___, 130 S.Ct. 2521 (2010).

Accordingly, plaintiff's motion (D.E. 20) is granted. As required by 28 U.S.C. § 2412, the Court finds, as alleged, that plaintiff is a prevailing party, that the position of the United States was not substantially justified, and the plaintiff's net worth does not exceed \$2,000,000. The Court further finds reasonable the request that plaintiff be compensated for the services of

his attorney at a rate of \$170.00 per hour for 38.6 hours plus reasonable expenses of \$22.11, for a total award of \$6,584.11. This sum is payable to plaintiff by the Commissioner.

SIGNED and ORDERED this 11th day of March, 2011.



Janis Graham Jack
United States District Judge